SEP 7 2006

Record of Decision
Addressing Right-of-Way Applications U 76985 and U 76986
To Transport Spent Nuclear Fuel
To the Reservation of the Skull Valley Band of Goshute Indians

The Decision

This record of decision sets forth the decision of the Bureau of Land Management (BLM), U.S. Department of the Interior (the Department), to adopt the no-action alternative as set forth in a comprehensive Environmental Impact Statement (EIS) prepared by the Nuclear Regulatory Commission (NRC), entitled Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah (December 2001). Spent nuclear fuel (SNF), the focus of the EIS, is the primary by-product from a nuclear reactor. The BLM was a cooperating agency in the preparation of this EIS, as were the Bureau of Indian Affairs (BIA), U.S. Department of the Interior, and the U.S. Surface Transportation Board.

The effect of this decision is to reject applications U 76985 and U 76986 for right-of-way grants filed by Private Fuel Storage L.L.C. (PFS). The applications seek right-of-way grants under Title V of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1761, to transport SNF across public lands managed by the BLM. As proposed, the fuel would be transported from an existing Union Pacific railroad site to the Reservation of the Skull Valley Band (Band) of Goshute Indians in Tooele County, Utah. The fuel would be stored in above-ground canisters on the Reservation, awaiting eventual disposal at a permanent repository in Yucca Mountain, Nevada. Storage would occur approximately 50 miles from Salt Lake City.

Background

PFS is a limited liability company owned by eight U.S. electric power generating companies. These companies are: Entergy Corporation; Southern California Edison Company; Genoa FuelTech, Inc.; Indiana-Michigan Company (American Electric Power); Florida Power and Light Company; GPU Nuclear Corporation; Xcel Energy Inc.; and Southern Nuclear Operating Company.

PFS filed an application, dated June 20, 1997, with the NRC for a license to receive, transfer, and store SNF from commercial nuclear power plants at a privately-owned independent spent fuel storage installation (ISFSI) on the Goshute Reservation. Shortly before, on May 20, 1997, PFS entered a proposed lease with the Band to use Reservation lands for this purpose. The Superintendent, BIA, Uintah and Ouray Agency, conditionally approved this proposed lease on May 23, 1997.

On August 31, 1998, PFS filed application U 76985 with the BLM for a right-of-way grant authorizing PFS to construct and operate a rail line across public lands in Tooele County. The rail line would be used to transport sealed transportation casks of SNF to the proposed ISFSI, also known as the PFS Facility (PFSF), operated by PFS on the Goshute Reservation. On the same day, PFS filed application U 76986 with the BLM for a right-of-way grant authorizing PFS to construct an intermodal transfer facility (ITF) on 9 acres of public lands. The proponent PFS would use this area (later increased to 21 acres) to transfer SNF from rail cars to heavy-haul tractor/trailers, which would then transport SNF to the temporary storage site on the Goshute Reservation. PFS indicated in application U 76986 that its preferred approach was to transport SNF across public lands by rail. Both applications sought a right-of-way grant for a term of 50 years.

On October 5, 1999, President Clinton signed the National Defense Authorization Act for Fiscal Year 2000 (113 Stat. 512). This act, also known as Public Law 106-65, directed the Secretary of Defense to conduct a study to evaluate the impact upon military training, testing, and operational readiness of any proposed changes in management of Utah national defense lands. Until this study and a report to Congress are made, the Secretary of the Interior may not proceed with the amendment of any individual resource management plan for Utah national defense lands. Utah national defense lands include lands described in right-of-way application U 76985.

On January 5, 2000, PFS applied for a license with the U.S. Surface Transportation Board to construct and operate a rail line to the PFSF (Finance Docket 33824).

A draft EIS was published in June 2000, and numerous comments were received by the agencies. 65 Fed. Reg. 39206 (June 23, 2000). A final EIS, dated December 2001, addressed the impacts expected to result from construction and operation of the PFSF, rail line, and ITF. The preferred alternative set forth in the EIS called for construction and operation of the PFSF on the Goshute Reservation. The SNF would be transported to the site by a rail line across BLM lands.

On January 6, 2006, after publication of the project's EIS in December 2001, President Bush signed Public Law 109-163, the National Defense Authorization Act for Fiscal Year 2006 (119 Stat. 3136). Section 384 of this Act designated certain lands as wilderness, to be known as the Cedar Mountain Wilderness Area, and added these lands to the National Wilderness Preservation System. The Cedar Mountain Wilderness Area includes lands described in PFS's application U 76985 seeking a right-of-way for a rail line.

Additional comments were received by the BLM following its publication on February 7, 2006, of a Federal Register notice at 71 Fed. Reg. 6286 requesting comments on the two right-of-way applications then pending before the agency.

On February 21, 2006, the NRC issued Materials License Number SNM-2513 to PFS for the receipt, possession, storage, and transfer of spent fuel at the PFS facility located at

Site A on the Goshute Reservation (71 Fed. Reg. 10068 on Feb. 28, 2006). The license is for a term of 20 years, and the licensee may seek to renew it prior to its expiration. The license authorizes PFS to provide interim storage in a dry cask storage system for up to 40,000 metric tons of uranium contained in intact spent fuel, damaged fuel assemblies, and fuel debris. The dry cask storage system authorized for use is a site-specific version of the HI-STORM 100 system designed by Holtec International, Inc. PFS has indicated that it may seek to renew the license for 20 years (total of 40 years). A challenge to this license by the State of Utah is presently pending before the U.S. Court of Appeals, District of Columbia Circuit, in *Ohngo Gaudadeh Devia and State of Utah v. Nuclear Regulatory Commission and the United States of America*, Nos. 05-1419, 05-1420, and 06-1087.

With the issuance of Materials License Number SNM-2513 by the NRC, there remains for consideration by the Department of the Interior whether the BLM should grant or deny right-of-way applications U 76985 and U 76986, and whether the BIA should approve or disapprove the 1997 proposed lease entered by PFS and the Band. Although Federal Register notices advising of the availability of the draft EIS suggested that the BLM would await a decision by the BIA before acting, 65 Fed. Reg. 39174 (June 23, 2000) and 65 Fed. Reg. 39206 (June 23, 2000), these notices are not binding. The Band has asked the Department to proceed promptly; the BLM has received comments as a response to BLM's February 7, 2006, Federal Register notice; and the NRC has since issued its license. In response, the BLM concluded its review of the analysis so that a decision can be issued. It is the BLM's understanding that a BIA decision is also forthcoming.

The Alternatives

The proposed action is set forth as Alternative 1 in the EIS.

1. *Proposed Action – Alternative 1: Construction and operation of the proposed Private Fuel Storage Facility at the proposed location, Site A, on the Reservation, a new rail siding at Skunk Ridge, and a new rail line connecting the Skunk Ridge siding with Site A.*

Alternative 1 involves the construction and operation of the proposed PFSF at a site designated as Site A in the northwest corner of the Skull Valley Indian Reservation and a new rail line connecting the existing Union Pacific railroad to the site. The proposed PFSF would be designed to store a lifetime capacity of up to 40,000 metric tons of uranium (MTU) (44,000 tons) of SNF. The capacity of the proposed PFSF would be sufficient to store all the SNF from reactor sites owned by PFS members, as well as SNF from reactor sites that are not owned by PFS members.

Construction of the proposed PFSF would occur in three phases. Phase 1 construction, which would provide an operational facility, is planned to begin upon issuance of a license by the NRC, PFS's assurance of adequate funding, and approval of a proposed

lease between PFS and the Skull Valley Band. The maximum term of the proposed lease is 50 years. About one-fourth of the storage area for the proposed PFSF would be constructed during Phase 1, which would be completed in approximately 18 months. Another one-fourth would be completed during Phase 2, and the remaining portion constructed during Phase 3. The maximum amount of SNF that PFS could accept at the proposed PFSF over the term of the license and the proposed lease is 40,000 MTU. Once PFS had accepted 40,000 MTU of SNF, it could not accept any additional SNF shipments, even if it had begun to ship SNF off site.

SNF to be shipped to the proposed PFSF would be placed inside sealed metal canisters at commercial nuclear power plants. These canisters would then be placed inside NRC-certified steel shipping casks for transport by rail to the new rail siding at Skunk Ridge. Dedicated trains, stopping only for crew changes, refueling, and periodic inspections, would be used to transport SNF from the existing reactor sites to Skull Valley. PFS expects that it would receive one to two trains, each carrying 2 to 4 shipping casks, per week from the reactor sites. The number of loaded SNF canisters (inside shipping casks) is estimated to be between 100 and 200 annually. Each canister would contain approximately 10 MTU of SNF.

The nearest main rail line is approximately 39 km (24 miles) north of the proposed site. PFS's preferred option for transporting SNF from the existing Union Pacific main line railroad to the site is to build a new rail line to the site. The new rail line, and its associated rail siding, would connect to the existing Union Pacific main rail line at Skunk Ridge (near Low, Utah). The proposed right-of-way for the rail corridor would be 51 km (32 miles) long and 60 m (200 ft) wide. It would run to the proposed PFSF site through public lands administered by the BLM on the eastern side of the Cedar Mountains. Because these public lands are outside a transportation and utility corridor described in the BLM's Pony Express Resource Management Plan (RMP), an amendment to this RMP would be necessary before the BLM could issue a right-of-way.

Before the Pony Express RMP may be amended, however, the Department of Defense has certain reporting duties under the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65). As noted above, Section 2815(b) of this Act directs the Secretary of Defense to conduct a study to evaluate the impact upon military training, testing, and operational readiness of any proposed changes in land designation or management of the Utah national defense lands. Utah national defense lands are "public lands under the jurisdiction of the Bureau of Land Management in the State of Utah that are adjacent to or near the Utah Test and Training Range and Dugway Proving Ground or beneath the Military Operating Areas, Restricted Areas, and airspace that make up the Utah Test and Training Range." Section 2815(d) provides that "[u]ntil the Secretary of Defense submits to Congress a report containing the results of the study, the Secretary of the Interior may not proceed with the amendment of any individual resource management plan for Utah national defense lands, or any statewide environmental impact statement or statewide resource management plan amendment package for such lands, if the statewide environmental impact statement or statewide resource management plan amendment addresses wilderness characteristics or wilderness management issues affecting such

lands." The study required by section 2815 has not been completed, and no report has been submitted to Congress.

From the BLM's perspective, Alternative 1 involves the amendment of the Pony Express RMP and the issuance of a right-of-way grant authorizing the construction and operation of a new rail line across public lands. The route of the right-of-way is described in PFS's application U 76985.

At the proposed PFSF, a dry cask storage technology would be used. The sealed metal canisters containing the SNF would be unloaded from the shipping casks at the proposed PFSF, loaded into steel-and-concrete storage casks, and then placed on concrete pads for above-ground storage. The canister-based cask system for confining the SNF has been certified by NRC in accordance with NRC requirements (10 CFR Part 72). PFS anticipates storing as many as 4,000 sealed metal canisters inside individual storage casks, for a total maximum storage of 40,000 MTU of SNF.

By the end of the licensed life of the proposed PFSF and prior to the expiration of the proposed lease, it is expected that the SNF would have been shipped to a permanent repository. Service agreements (i.e., contracts) between PFS and companies storing SNF at the proposed PFSF will require that the utilities remove all SNF from the proposed PFSF by the time the PFS license is terminated and PFS has completed its licensing or regulatory obligations under the NRC license. The service agreement requirement to remove the SNF from the proposed PFSF is not dependent upon the availability of a permanent geological repository. Therefore, if the PFS license is terminated or revoked prior to the availability of a permanent geological repository, the reactor licensees storing SNF at PFSF would continue to retain responsibility for the fuel and must remove it from the proposed PFSF site before license termination.

At the end of its useful life (or upon termination of the proposed lease with the Band or termination of the NRC license, whichever comes first), the proposed PFSF would be closed. As a condition of the proposed lease with the Band and as required by NRC regulations, decommissioning of the proposed PFSF would be required prior to closure of the facility and termination of the NRC license. Although the exact nature of decommissioning cannot be predicted at this time, the principal activities involved in decommissioning would include:

- Removal of all remaining SNF from Skull Valley;
- Removal or disposition of all storage casks;
- Removal or disposition of the storage pads and crushed rock, at the option of the Band and the BIA; and
- Removal of the buildings and other improvements or their transfer to the Band, at the option of the Band and the BIA.

The objective of the radiological decommissioning would be to remove all radioactive materials having activities above the applicable NRC limits in order for the site to be released for unrestricted use. The SNF contained inside sealed metal canisters would be

transferred to licensed shipping casks for transportation away from Skull Valley. The proposed lease requires that the SNF be removed from the Reservation before the end of the lease term.

2. *Alternative 2: Construction and operation of the proposed PFSF at an alternative location, Site B, on the Reservation, with the same Skunk Ridge rail siding and rail line as described under Alternative 1.*

This alternative involves constructing the proposed PFSF at an alternative location, Site B, on the Reservation. This site is located about 800 m (0.5 mile) south of the proposed Site A and is similar in terms of its environmental characteristics to the proposed site. Under this alternative, a new rail line would be constructed across BLM lands from Skunk Ridge. The rail corridor through Skull Valley would be essentially identical to the one for the proposed action, but it would be about 1.6 km (1 mile) longer due to the slightly greater distance of Site B from the existing main rail line. For the BLM's decisional purposes, Alternative 2 involves the amendment of the Pony Express RMP and the issuance of a right-of-way grant authorizing the construction and operation of a new rail line across public lands. The route of the right-of-way is described in PFS's application U 76985.

3. *Alternative 3: Construction and operation of the proposed PFSF at Site A, and construction and operation of a new Intermodal Transfer Facility near Timpie, Utah, with the use of heavy-haul vehicles to move SNF down the existing Skull Valley Road.*

Under this alternative, the proposed PFSF would be constructed at Site A, but transportation of SNF from the existing Union Pacific main rail line to the site would be accomplished by heavy-haul tractor/trailers. An Intermodal Transfer Facility (ITF) and rail siding would be built on land managed by BLM at the existing main rail line near Timpie, Utah, to transfer SNF shipping casks from rail cars to the heavy-haul vehicles, which would then transport the SNF along the existing Skull Valley Road to the site. No rail line would be built under this alternative.

The ITF would occupy approximately 21 acres of BLM land 2 miles west of the intersection of I-80 and Skull Valley Road. It consists of three rail sidings, a new access road for heavy-haul vehicles, and a building with a crane for transferring SNF shipping casks from rail cars onto heavy-haul trailers. PFS has filed application U 76986 with BLM for a right-of-way grant authorizing use of this land. The ITF would occupy previously disturbed land lying between the existing Union Pacific Railroad and Interstate 80. The SNF would arrive at the ITF by rail using the Union Pacific rail line. The crane would load the fuel from a rail car onto a heavy-haul trailer, which would use the existing Skull Valley Road to carry the fuel south to the PFSF on the Goshute Reservation, a distance of approximately 26 miles. Skull Valley Road is an undivided, two-lane public road, one lane in each direction. The BLM issued a right-of-way (U 04240) for this road to the Utah State Road Commission on May 17, 1951. For the

BLM's decisional purposes, Alternative 3 involves the issuance of a right-of-way grant authorizing the use of public land for the ITF.

The EIS indicates that Alternative 3 was not selected as the preferred alternative because construction and use of the rail line would have advantages over the use of the ITF. The ITF requires the use of heavy-haul trailers traveling on Skull Valley Road at speeds not to exceed 20 miles per hour. Impacts to local traffic would be difficult to mitigate, impacts which could be entirely avoided by use of the rail line from Skunk Ridge (EIS at section 9.4.3 (p. 9-16)). Also, the ITF would involve additional doses of radiation incurred by workers transferring SNF shipping casks from rail cars to heavy-haul vehicles at the ITF. This additional dosage would also be avoided if the rail option were to be used instead of the ITF option (*Id.* at section 9.4.1.3 (p. 9-9).

4. *Alternative 4: Construction and operation of the proposed PFSF at Site B, with the same ITF as described under Alternative 3.*

This alternative would be identical to Alternative 3 except that the proposed PFSF would be located at Site B on the Reservation rather than at Site A. The ITF and rail siding would be located near Timpie, and transport of SNF by heavy-haul vehicles would use Skull Valley Road. No rail corridor would be built under this alternative. As in Alternative 3, this alternative involves the issuance of a right-of-way grant authorizing use of the public lands for the ITF. PFS has filed right-of-way application U 76986 for use of BLM lands for the ITF.

5. *No Action Alternative*

Under the No Action alternative, no PFSF or transportation facilities would be built in Skull Valley. Under this alternative, no proposed lease would be approved by the BIA between PFS and the Band. For the BLM's decisional purposes, right-of-way applications U 76985 and U 76986 filed by PFS would each be denied. The Band would be free to pursue alternative uses for the land in the northwest corner of the Reservation.

The Wyoming Alternate Site

The proponent PFS identified a site in Fremont County, Wyoming, as an alternative, secondary site. This site is located north of Shoshoni, Wyoming, approximately 24 miles northeast of Riverton and 10 miles south of the Owl Creek Mountains. This site was not actively considered by PFS for the siting of a SNF storage facility, but it was evaluated in the EIS for comparison purposes, i.e., to determine whether it was obviously superior to the Skull Valley site selected by PFS. The Wyoming site is private land located adjacent to an existing railroad and requiring approximately one mile of new rail construction for access. NRC staff concluded that construction and operation of a SNF storage facility at the Wyoming site was not an obviously superior alternative to the proposed action. PFS has elected to pursue the leasing and development of only Site A on the Skull Valley Reservation.

Alternatives considered but not further addressed

A number of alternatives were considered in the EIS but not further addressed. These alternatives included: (1) a different, privately owned, away-from-reactor ISFSI; (2) shipment of SNF from reactor sites without sufficient storage space to reactor sites with additional storage capacity; (3) alternative sites that would, in effect, eliminate the need for the proposed PFSF; (4) alternative technologies available for an operational ISFSI; and (5) transportation options for moving SNF cross-country to the location of the proposed PFSF, as well as transportation options within Skull Valley. The first three of these items were eliminated from detailed evaluation because of the absence of any evidence that these options were actually viable, the unavailability of sufficient detail for evaluation, and the speculative nature of such options. The remaining items did not offer any obvious advantage over those technology and transportation alternatives identified for evaluation in the EIS and were eliminated from detailed evaluation.

Environmentally Preferable Alternative

The BLM considers the environmentally preferable alternative to be the No Action alternative. The potential impacts of constructing and operating the proposed PFSF and associated SNF transportation facilities in Skull Valley would not occur under this alternative. No rail line to the PFSF would be built, and no ITF would be constructed on BLM lands. Traffic on Skull Valley Road would not be increased by heavy-haul trailers carrying SNF. Positive economic benefits from tax revenues, local payroll, and other expenditures would not be available to the Band, but the Band would be free to pursue other uses for its land.

The Basis for the Decision

The BLM's decision is to adopt the No Action alternative, the effect of which is to deny right-of-way applications U 76985 and U 76986 filed by PFS.

Alternatives 1 and 2

Cedar Mountain Wilderness Area

On January 6, 2006, after publication of the project's EIS in December 2001, President Bush signed Public Law 109-163, the National Defense Authorization Act for Fiscal Year 2006 (119 Stat. 3136). Section 384 of this Act designated certain lands as wilderness, to be known as the Cedar Mountain Wilderness Area, and added these lands to the National Wilderness Preservation System. In addition, section 384 withdrew the Cedar Mountain Wilderness Area "from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the United States mining laws, and from disposition under all laws pertaining to mineral and geothermal leasing, and mineral materials, and all amendments to such laws." The Cedar Mountain Wilderness Area includes lands described in PFS's application U 76985 seeking a right-

of-way for a rail line. The effect of this wilderness designation is to preclude the BLM's issuance of a right-of-way grant authorizing a rail line through those lands designated as the Cedar Mountain Wilderness Area. As a practical matter, any rail line would be forced to halt at the boundary of the lands designated as the Cedar Mountain Wilderness Area.

The BLM's authority to issue a right-of-way grant for a rail line across the public lands is set forth in Title V of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1761. Section 501(a) of FLPMA provides in part: "The Secretary [of the Interior], with respect to the public lands and, the Secretary of Agriculture, with respect to lands within the National Forest System (*except in each case land designated as wilderness*), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for -- . . . roads, trails, highways, *railroads*, . . . or other means of transportation . . . (emphasis added)." Thus, section 501(a) expressly removes from the Secretary and his delegate, the BLM, the authority to issue a right-of-way grant for lands designated as wilderness. To issue a right-of-way grant in such a case would violate Section 501(a) of FLPMA. Because the BLM cannot issue a right-of-way grant for a necessary part of the lands described in PFS's application U 76985, Alternatives 1 and 2, both of which rely on the rail line described in application U 76985, have not been selected.

The BLM regulations support denial of application U 76985. Regulation 43 CFR 2804.26(a) states that the BLM may deny a right-of-way application if "(1) The proposed use is inconsistent with the purpose for which the BLM manages the public lands described in [the] application; (2) The proposed use would not be in the public interest; (3) [The applicant is] not qualified to hold a grant; (4) Issuing the grant would be inconsistent with [FLPMA], other laws, or these or other regulations; (5) [The applicant does] not have or cannot demonstrate the technical or financial capability to construct the project or operate facilities within the right-of-way; or (6) [The applicant does] not adequately comply with a deficiency notice . . . " Regulation 43 CFR 2804.26(a)(4) supports denial of application U 76985 because approval of this application would be inconsistent with Section 501(a) of FLPMA. Additional support for denial is set forth at 43 CFR 2802.10(a), which provides that BLM may grant rights-of-way "except when [a] statute, regulation, or public land order specifically excludes rights-of-way."

Even in the absence of the language in section 501(a) precluding the authorization of a right-of-way through wilderness lands, Alternatives 1 and 2 would not be an appropriate selection. Lands included in the National Wilderness Preservation System, such as the Cedar Mountain Wilderness Area, are to be administered by the Secretary for the use and enjoyment of the American people in such a manner as will leave them unimpaired for future use and enjoyment as wilderness and so as to provide for the protection of these areas and their wilderness character (16 U.S.C. 1131(a)). Congress defined "wilderness" to be "an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined

type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value (16 U.S.C. 1131(c))." A rail line through such an area would create a noticeable impact on the Cedar Mountain Wilderness Area. In addition, the 1 to 2 trains per week each carrying two to four loaded shipping casks of SNF from reactor sites through the wilderness would be incompatible with maintaining the wilderness values recognized by Congress. Denial of right-of-way application U 76985 is clearly required, because operation of a rail line would be inconsistent with the purpose for which the BLM manages the Cedar Mountain Wilderness Area (43 CFR 2804.26(a)(1)).

National Defense Authorization Act for Fiscal Year 2000

Additional support for not selecting Alternatives 1 and 2 is the failure to date of the Department of Defense to prepare the study and submit to Congress the report required by Section 2815 of Public Law 106-65, the National Defense Authorization Act for Fiscal Year 2000. Section 383 of Public Law 109-163 directs the Secretary of Defense to prepare and transmit to the Secretary of the Interior within six months of Interior's request an analysis of the military readiness and operational impacts of a proposed revision to a land use plan for the Utah Test and Training Range. Section 383 may speed the process of obtaining an analysis of the impacts of a land use plan amendment, but it provides no direction to the Defense Department to submit a report to Congress. In the absence of the study and report required by Public Law 106-65, the BLM could not proceed with the amendment of the Pony Express Resource Management Plan, which amendment is necessary for the grant of a rail line right-of-way.

Given the substantial basis for not selecting Alternatives 1 and 2, it is unnecessary to determine whether the grant of a right-of-way through the Cedar Mountain Wilderness Area would be precluded by the fact that such lands are withdrawn from all forms of entry, appropriation, or disposal under the public land laws. This issue is wholly distinct from the analysis above of Section 501(a) of FLPMA, Public Law 106-65, and 16 U.S.C. 1131.

Alternatives 3 and 4

Alternatives 3 and 4 are not selected because to grant application U 76986 based on the existing record would be contrary to the public interest (43 CFR 2804.26(a)(2)). The public interest requires that a decisionmaker, at a minimum, be able to articulate a rational connection between the facts found and the conclusions made. Too many questions remain unanswered to grant a right-of-way to PFS at this time. In so deciding, we acknowledge the hard work of the NRC in authoring the 2001 EIS and granting Materials License Number SNM-2513 to PFS. We further acknowledge the economic benefits that the Band could enjoy, e.g., jobs and lease income, if the PFSF were developed (see EIS at sections 6.1.5.1 (pp. 6-11 through 6-14); 6.2.1.2 (p. 6-32); 8.2.1 (p. 8-11); and 9.4.1.1 (p. 9-5)). We can not agree, however, that all appropriate land

management questions have been answered at this time. Application U 76986 should be denied.

The elimination of Alternatives 1 and 2 as reasonable alternatives by Public Law 109-163 only left Alternatives 3 and 4 for consideration. As set forth above, Alternatives 3 and 4 call for the BLM to issue a right-of-way grant for an ITF. The ITF is a 21-acre site where a crane would transfer casks of SNF from rail car to heavy-haul trailer. Figure 2.15 of the EIS at p. 2-48 depicts a typical heavy-haul tractor trailer 150 feet long and 12 feet wide. The casks would then be trucked at a speed of no more than 20 miles per hour for 26 miles south on Skull Valley Road to the Reservation. This slow rate of speed would require other traffic to reduce speed or make additional passing maneuvers (EIS at section 5.5.2.2 (p. 5-31)). Comments received from the State of Utah, dated May 8, 2006, in response to the BLM's February 7, 2006, Federal Register notice indicate that parts of Skull Valley Road are only 20-feet wide, consisting of two lanes, one in each direction, each 10-feet wide with minimal shoulder. The State notes that by necessity the slow moving, 12-foot wide PFS vehicle will have to travel near the center of the 20-foot wide road (at p. 27 and Exhibit 17).

The ITF could handle a maximum of 3 casks per single purpose train. If a maximum train size of three loaded casks were received, approximately 28 work hours are estimated to complete the transfer of the last cask to the heavy-haul trailer for delivery to the PFSF (EIS at section 5.7.2.9 (p. 5-60)). One of the casks would be transferred from its railcar onto a heavy-haul trailer, while the other casks would remain on the railcars until the heavy-haul trailer returned from the PFSF, whereupon they would be transferred to the heavy-haul trailer, one at a time, and the shipping sequence would be repeated (*Id.* at p. 5-61). A minimum of two heavy-haul trailers would be used to move SNF to the PFSF (*Id.* at section 2.2.4.2 (p. 2-47)).

At the ITF the crew would consist of four handlers, a spotter, inspector, crane operator, and a health physics staff member. The handlers would attach ropes to the ends of the cask after it is released from the railcar and help guide it into a tie-down cradle on the low-boy trailer or to the temporary storage location (EIS at section 5.7.2.9 (p. 5-60)). Shipments from the ITF to PFSF would be made only during daylight hours. Each trailer shipment would be accompanied by escorts, one vehicle traveling up to 1,000 feet in front of the trailer, one traveling up to 1,000 feet behind the trailer, to warn travelers of the slow moving truck. The trip will take approximately 1.5 hours (*Id.* at p. 5-61).

Alternative 3 calls for storage of SNF at Site A on the Reservation; Alternative 4 calls for storage of SNF at Site B on the Reservation. The NRC's issuance of Materials License Number SNM-2513 to PFS on February 21, 2006, removes Alternative 4 from consideration because the license authorizes storage at Site A only. Site B is no longer an option, and so Alternative 3 is the only alternative that remains for consideration.

In applications U 76985 and U 76986, PFS states that both the rail and heavy-haul trailer modes of transporting the casks are viable, but that "[t]he rail spur is the preferred mode of transportation to the PFSF because it involves less handling of the casks and is

therefore more efficient and timely in comparison to the highway. In addition, while there is little traffic on the Skull Valley Road, the large tractor/trailers needed to haul the casks will create some level of traffic interference, which will be avoided using the rail spur."

The EIS found that Alternatives 3 (and 4) had two disadvantages, which caused each to be rejected as a preferred alternative. The first of these disadvantages is the impact to local traffic on Skull Valley Road caused by slow moving heavy-haul trailers carrying SNF from the ITF. Such impacts would be difficult to mitigate (EIS at section 9.4.3 (p. 9-16)). The second disadvantage is the additional radiation that workers transferring SNF shipping casks from railcars to heavy-haul trailers at the ITF would incur. These additional doses could be avoided if the rail option were used instead (*Id.* at section 9.4.1.3 (p. 9-9)).

No Action Alternative

Skull Valley Road

We believe that the No Action alternative, and not Alternative 3 (or 4), is the proper choice because the EIS has failed to consider a number of important factors. First, the EIS has not sufficiently studied the impacts that will occur when SNF is removed *from* the PFSF via Skull Valley Road and sent to a permanent repository or returned to its source. The EIS has studied how transportation of SNF *to* the PFSF will occur, but it has not devoted similar consideration to how transportation of SNF *from* the PFSF will occur and, in particular, how transportation from the PFSF via Skull Valley Road will occur. This is an important consideration because the PFSF is a temporary storage facility and is not intended as a permanent repository. As noted above, service agreements between PFS and the utilities storing SNF at the PFSF require that the utilities remove all SNF from the site by the time the PFS license is terminated and PFS has completed its licensing or regulatory obligations under its NRC license. Removal of SNF from the PFSF demands a hard look.

The first page of the final EIS describes the focus of the document in this way: "This FEIS evaluates the potential environmental effects of the ISFSI proposed by PFS, including construction and operation of new transportation facilities that would provide access *to* the proposed ISFSI and a consideration of alternatives to that proposal. . . . . The proposed action would include construction and operation of the proposed ISFSI, [also called the Private Fuel Storage Facility (PFSF)], including transporting SNF *to* the proposed PFSF, and the construction of a rail line from Skunk Ridge *to* the proposed PFSF site . . . (sections 1.1 and 1.2 (p. 1-1), emphasis added)."

In describing the scope of the EIS at section 1.4.1 (p. 1-14), the cooperating Federal agencies, of which the BLM is one, state: "Transportation. The analysis of potential impacts resulting from the transportation of SNF considers relevant aspects of both rail and truck transport *to* the proposed PFSF (emphasis added)." The document is replete with other statements indicating that transportation of SNF *to* the PFSF was the focus of

the document (see EIS, e.g., sections 1.5.3.1 (p. 1-17); 2.1.2.1 (p. 2-18); 2.2.4.2 (pp. 2-40, 2-43, 2-47); 5 (p. 5-1); 5.4 (p. 5-15); 5.5.2.2 (p. 5-31); 5.6.2 (p. 5-34); 5.7.2.4 (p. 5-49); 5.7.2.5 (p. 5-51); 5.7.2.6 (p. 5-53); 5.7.2.8 (pp. 5-57 through 5-58); 5.7.2.9 (pp. 5-58 through 5-62); 5.8.3.2 (p. 5-71); 5.8.4 (p. 5-72); 6 (p. 6-1); 6.1.4.3 (p. 6-10); 6.1.5.3 (pp. 6-12 through 6-14); 6.1.8.3 (p. 6-20); 9.3 (p. 9-2); and 9.4.3 (p. 9-16); Appendix A Scoping Report at section 3.1 (p. 12); Appendix A Supplemental Scoping Report at section 3.1 (pp. 12 - 13); Appendix C (p. C-1); Appendix D at sections D.3 through D.3.1.1 (pp. D-20 through D-21); and Appendix G at section G.2 (p. G-9)).

We acknowledge a discussion in the EIS of the radiological risk of transporting 4,000 SNF canisters from the PFSF to the Utah-Nevada border at section 5.7.2.7 (pp. 5-54 through 5-57) and Appendix D at section D.3.2 (p. D-26). Tables 5.11 and 5.13 (pp. 5-56 and 5-57) show the annual and cumulative 20-year campaign radiation doses and health risks associated with shipment of SNF from the PFSF to the Utah-Nevada border via the ITF. In addition, we note that sections 2.1.2 (p. 2-18); 2.1.2.2 (p. 2-26); 2.1.6 (pp. 2-32 through 2-33); 5.7 (p. 5-35); 5.7.1.2 (p. 5-38); 5.7.2 (p. 5-39); 5.7.2.1 (p. 5-41); 5.7.2.2 (pp. 5-42 through 5-43); 5.7.2.3 (pp. 5-46 through 5-47); and 5.7.2.11 (p. 5-63); and Appendix C at section C.2 (pp. C-2 and C-4) address removal of SNF from the PFSF; these sections, however, do not take a hard look at how removal will occur via Skull Valley Road, a key access route now that Alternatives 1, 2, and 4 have been eliminated. This same deficiency is present in Appendix G, which addresses public comments at sections G.3.4.1.2 (p. G-74); G.3.4.1.3 (p. G-75); G.3.4.2.4 (p. G-77); and G.3.16.3.3 (p. G-330). While the radiation doses and health risks identified in Tables 5.11 and 5.13 are important, they are but one facet of the analysis. Not explored are the practical impacts occasioned by using Skull Valley Road for removal. Whether Skull Valley Road will be adequate to the task when removal of SNF occurs at the conclusion of the license term is unanswered. Similarly unclear is whether Skull Valley Road will be adequate to the task if removal occurs over a brief period of time, rather than a 10- or 20-year period. The socioeconomic and community resources (see EIS at section 5.5 (p. 5-23)) that will be impacted by removal of SNF via Skull Valley Road have not received the required hard look. The EIS examines only one part of the analysis, albeit an important one, but largely neglects the impacts that will occur when removal of SNF is scheduled to occur via Skull Valley Road.

Tekoi Balefill

The EIS also neglects an analysis of the Tekoi Balefill, a disposal site for bundled waste that the Goshute Tribe has opened on its Reservation. The Tekoi Balefill is important for an analysis of Alternative 3 (and 4) because the waste received at the Tekoi Balefill is presently transported by truck over the same road, Skull Valley Road, that would be used to carry SNF to and from the PFSF. Comments received by the BLM from the State of Utah, dated May 8, 2006, in response to the BLM's February 7, 2006, Federal Register notice estimate that Balefill traffic will account for 130 to 160 truck trips per day on Skull Valley Road (at p. 32). This road is 20-foot wide, much of it without shoulders, the State notes, and the heavy-haul trailers used by PFS are expected to be 12 feet wide (at pp. 26-27).

The absence of any discussion of the Tekoi Balefill in the December 2001 EIS is understandable because the Balefill was not underway until 2004, following issuance of the 2001 EIS. An environmental document, dated May 2004, was prepared for this disposal site by BIA, and consideration of the PFSF and alternate routing was factored into its cumulative impacts analysis at section 6.7 (p. 6-7). The BLM, however, had no part in preparing this document.

Additional comments underscore the importance of Skull Valley Road to those using it. In a letter dated April 13, 2006, the Utah Test and Training Range Manager stated that SR-196 (Skull Valley Road) is the main route to Dugway Proving Ground, Skull Valley ranches, public land in Skull Valley, and is "one of only three emergency evacuation routes for the chemical weapons incinerator in Tooele Valley." Whether Skull Valley Road can accommodate the traffic from the Tekoi Balefill and PFSF, in addition to other regular users of the road, is a question as yet unanswered by the BLM. In the absence of such answer, it would be contrary to the public interest to issue a right-of-way grant to PFS.

Storage of hazardous materials

Traffic caused by the Tekoi Balefill and other users of Skull Valley Road also raises the question whether the transfer of SNF via Skull Valley Road will proceed as described above at Alternative 3 or remain at the ITF for longer periods of time. The importance of this question is pointed out by a number of commenters who claim that storage of SNF will occur at the ITF. Responding to the BLM's February 7, 2006, Federal Register notice, Senator Orrin Hatch and Senator Robert Bennett state in a letter dated May 2, 2006, that use of the ITF would violate BLM policy against using BLM land for the *storage* of hazardous materials. Senators Hatch and Bennett quote from the 1990 Pony Express RMP, which states at page 4 in addressing military activities, "Public land will not be made available for inappropriate uses such as *storage or use of hazardous materials* (munitions, fuel, chemicals, etc.) and live artillery firing (emphasis added)." The PFS operation on the ITF will not be a flow-through operation, the Senators state, and SNF casks will be stored at the ITF awaiting transfer for truck transport.

If storage were to occur at the ITF under PFS's transportation plan, denial of application U 76986 would be appropriate. As noted above, the BLM may deny a right-of-way application if the proposed use is inconsistent with the purpose for which the BLM manages the public lands in the application (43 CFR 2804.26(a)(1)).

Congressional enactment of Public Law 109-163 designating the Cedar Mountain Wilderness Area changed the decisional landscape. The preferred alternative of the EIS, shipment by rail, was no longer a possibility. What remained was a set of discarded

alternatives, Alternatives 3 and 4, that appear not to have received the attention of the rail alternatives (Alternatives 1 and 2.) The focus on transportation by rail instantly shifted to transportation by heavy-haul trailers when Congress designated the Cedar Mountain Wilderness Area.

Understandably, the EIS is silent on the designation of the Cedar Mountain Wilderness Area. Whether use of the ITF and heavy-haul trailers on Skull Valley Road will impact the use of the Wilderness is yet another question to be addressed. The Cedar Mountain Wilderness Area is atypical; low-level overflights and operations of military aircraft, helicopters, missiles, or unmanned aerial vehicles over the wilderness are not precluded.

Additional study of the questions set forth above is necessary. Careful consideration of these questions is appropriate because of the uncommon nature of the cargo being transported. The BLM's duties as a land manager require that it take a hard look at these questions. To grant the right-of-way sought by PFS without answers to these questions would be to ignore its land management duties and the needs of the affected public. In so concluding, we are not unmindful of the economic benefits, such as jobs and lease income, that could accrue to the Band if the PFSF were developed (EIS at sections 6.1.5.1 (pp. 6-11 through 6-14); 6.2.1.2 (p. 6-32); 8.2.1 (p. 8-11); and 9.4.1.1 (p. 9-5)). To grant the right-of-way sought by PFS at this time, however, would be contrary to the public interest (43 CFR 2804.26(a)(2)). [1]

Yucca Mountain

Additional support for our selection of the No Action alternative above is provided by a number of statements from elected officials and recent legislation. These statements and legislation further assist in defining the public interest.

In correspondence with Senator Hatch dated October 26, 2005, Secretary of Energy Samuel Bodman concluded that "the Private Fuel Storage Facility initiative is not part of the Department's overall strategy for the management of spent nuclear fuel and high-level radioactive waste." Noting that the PFS facility would be constructed and operated by the private sector outside the scope of the Nuclear Waste Policy Act (NWPA), the Secretary found that the Department of Energy (DOE) would be prohibited by statute from providing funding or financial assistance for the project.

Secretary Bodman made clear in his letter that the DOE is continuing to work toward the successful development of the Yucca Mountain repository. The Secretary stated that development of Yucca Mountain as a permanent geologic repository for the Nation's

[1] We note with interest *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission*, 449 F.3d 1016 (9th Cir. 2006), which held that the NRC's determination that NEPA does not require a consideration of the environmental impact of terrorist attacks does not satisfy a reasonableness review.

high-level radioactive waste will reduce, if not eliminate, the need for high-level radioactive waste to go to a private temporary storage facility, such as the PFSF.

Secretary Bodman underscored this message in a letter to Senator Hatch dated May 5, 2006: "A deep geologic repository at Yucca Mountain is in our national interest, and indeed is critical to our Nation's energy security and national security."

Former Secretary of Energy Spencer Abraham, in prior correspondence with Senator Hatch, dated July 8, 2002, reached many of these same conclusions. Secretary Abraham stated that the NWPA authorizes the DOE to provide funding and financial assistance only for shipments of spent fuel to a facility constructed under that act. Because the PFS/Goshute facility would be constructed outside the scope of the act, the DOE could not fund or otherwise provide financial assistance for PFS. Nor could the DOE monitor the safety precautions that a private facility may install. All costs associated with the PFS plan would have to be covered by the members of the PFS private consortium, the Secretary concluded. As in the case of Secretary Bodman, Secretary Abraham found that the best course of action is to pursue permanent storage at Yucca Mountain.

The Yucca Mountain repository referred to by Secretaries Bodman and Abraham is the focus of Public Law 107-200. This law, approved July 23, 2002, is a joint resolution of the Senate and House of Representatives approving the site at Yucca Mountain as a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the NWPA (116 Stat. 735). Passage of this law was preceded on February 15, 2002, by the President's recommendation to Congress that Yucca Mountain be used for the storage of nuclear waste.

The legislative history accompanying Public Law 107-200 points out that pursuant to the NWPA amendments of 1987, Congress selected the Yucca Mountain site in Nevada as the single site to be characterized by DOE for long-term geologic disposal of the Nation's high-level radioactive waste inventories (H.R. Rep. No. 107-425 (May 1, 2002)).

Conclusion

Alternatives 1 and 2 are not selected because to grant the right-of-way sought by PFS in application U 76985 would be inconsistent with the purpose for which the BLM manages the public lands and inconsistent with Section 501(a) of FLPMA (43 CFR 2804.26(a)(1) and (a)(4)). Alternatives 3 and 4 are not selected because to grant the right-of-way sought by PFS in application U 76986 based on the existing record would be contrary to the public interest (43 CFR 2804.26(a)(2)). The No Action alternative is selected instead.

By selecting the no action alternative, the BLM has used all practicable means to avoid or minimize environmental harm, as required by Council on Environmental Quality regulations at 40 CFR 1505.2(c). As set forth above, the decision to adopt the No Action alternative means, in effect, that right-of-way applications U 76985 and U 76986 will be

denied. A decision to this effect will be rendered to PFS. The BLM would, of course, consider any future application by PFS for this project if the application addresses the deficiencies in the existing record discussed in this ROD.

Chad Calvert
Acting Assistant Secretary
Land and Minerals Management
U.S. Department of the Interior

9/7/06
Date

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